

**THREE MEMBER DUE PROCESS HEARING PANEL
EMPOWERED PURSUANT TO 162.961 R.S.MO.**

HEARING DECISION

Student's Name:

Parent's Name:

Parent's Attorney:

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Local Education Agency:

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Hearing Date:

December 1, 2003

Date of Report:

January 9, 2004

Hearing Officers:

**Patrick O. Boyle, Chairman,
Dr. Kim Ratcliffe and
Mr. George Wilson**

**Three Member Due Process Hearing Panel
Empowered Pursuant to 162.961 R.S.Mo.**

Issue

Parent requested a due process hearing alleging that the LEA failed to evaluate the student as requested by the parent on February 4, 2003; failed to follow proper procedures covering an IEP meeting held on February 4, 2003; failed to promptly develop an IEP when notified of student's sickness on March 24, 2003; failed to include a behavior improvement plan in student's IEP; and failed to implement student's IEP during student's sickness from March 24, 2003 to April 23, 2003. The alleged failures of the LEA were claimed by the parent to result in a failure to provide a free appropriate public education to the student.

Hearing was held on parent's request and, a default Judgment was rendered in favor of the LEA pursuant to 536.090 R.S.Mo. by the panel's decision of December 12, 2003.

The LEA filed a Counter Claim stating that the parent refused to furnish written consent for a proposed reevaluation of the student during the Spring and Fall of 2003. A request was made for the panel to override the parent's refusal to consent and to permit the LEA to proceed with student's assessment.

No evidence was offered at the hearing by the parent and, the panel found in favor of the LEA on the Cross Claim as part of the decision of December 12, 2003. The panel further ordered the parent to make the student available for up to two days of testing and

observation by January 5, 2004 with the reevaluation to be completed by January 30, 2004 and, for an IEP team to be reconvened to consider the student's placement for completion by February 20, 2004.

On December 23, 2003 the LEA filed a request to extend the time for decision herein from December 31, 2003 to January 31, 2004 and, this followed a request from the LEA on December 19, 2003 to amend the panel's decision. The LEA's request for an extension of time to January 31, 2004 was granted by the Chair on December 29, 2003 and, the panel amends the timeline set forth in the decision of December 12, 2003 as set forth herein.

Time Line

The decision of December 12, 2003 sets forth the sequence of events which lead to a requirement that a panel's decision be made by December 31, 2003. LEA's Motion for New Trial and Request for Extension of Time for Decision to January 31, 2004 filed on December 23, 2003 was granted on December 29, 2003 by the Chairman and, the revised decision of the panel is issued herewith within 30 days from the decision of December 12, 2003.

Findings of Fact

1. A Default Judgment is granted to the LEA on the parent's claims including failure to provide a free appropriate public education, and on the LEA Counter Claim.

2. The student is in need of reevaluation and, the parent has not signed written consents for student's reevaluation.

Decision and Rational

The student is due for reevaluation which should be done promptly and, an IEP team should be reconvened to consider student's placement as soon as possible.

A time line set forth in the Decision of December 12, 2003 has not been met due to the holiday season. The time line of the December 12, 2003 decision is revised and, the student's reevaluation is to be completed by the LEA on or before February 27, 2004. Parent is ordered to cooperate with the LEA in the observation and testing of the student as set forth in the prior order of December 12, 2003. The LEA may test and observe the student as set forth in the Order of December 12, 2003 to the extent reasonable with or without the consent of the parent.

Based upon the student's testing and observation, the LEA is to reconvene the student's IEP team for consideration of student's placement on or before March 28, 2004.

Appeal Procedure

Either party has the right to appeal this decision within 45 days to a State Court of competent jurisdiction pursuant to Chapter 536 of the Revised Statutes of Missouri, or to a Federal Court.

Panel Members Supporting Decision

Kim Ratcliffe
George Wilson
Patrick O. Boyle

Panel Members Opposing Decision